the landlord, this court will always assume that he has applied his mind to the question of reasonableness before giving his decision."

The appellant also argued, and indeed, opened his main appeal with the contention, that the notice to quit is bad. The tenancy runs from 12th of the month, and is so expressed in the agreement referred to before. The notice is to quit and vacate by 31st day of July 1949. I should have thought the notice obviously bad. The respondent cited *Dagger v. Shepherd*[8] which certainly enables a landlord, though not apparently a tenant, to save a notice which might be thought ambiguous by construing it in part as an offer. So respondent would say that as this notice was given on 7th June it was good and, meant that the tenancy was determined on 11th July and the tenant might if he wished remain to 31st July. It is I think unnecessary to say more as to the ambiguous character of the notice, than that respondent himself in his plaint construes it as a notice to quit on 31st July. I think it is clearly bad, and the appellant's tenancy has never been validly determined. This ground, which I think is substantially within the last ground of appeal in the petition is sufficient. On this ground, the appeal must be allowed, and but for the attacks which had been made on the way this case was heard, is all which I need have mentioned.

Appeal allowed.

In re ALSHAIKH ABDULLAH BIN ALI BIN AHMAD BIN ALSHAIKH ALI HARHARAH (Deceased);
SHAIKH SALIM BIN ABDULLAH BIN ALI BIN AHMAD BIN SHAIK ALI HARHARAH
v.
SHAIKAH HOWDASH BINTE SALIM NASER LAHMADI.

[Orig. Civ. Juris. (Thorogood, J.) July 22, 1950]

[Singapore — Originating Summons No. 144 of 1950]

Will — Mohammedan testator domiciled outside the Colony — Whether more than one-third of his estate can be disposed of by will — Whether heir's right of unrestricted enjoyment can be restricted.

A Shafi Mohammedan testator domiciled in Arabia made a will relating to immoveable property in Singapore whereby he directed that his whole estate should be divided in accordance with Mohammedan law twenty-one years after his death.

Held, that the testator had only power by his will to dispose of one-third of his estate; and that the whole estate of a deceased Mohammedan, or so much of it as has not been validly disposed of by will, devolves upon his heirs according to Mohammedan law at the moment of his death; and **semble** that the direction postponing distribution of the estate was contrary to Mohammedan law. Also **held**, that by the law of the Colony there was nothing to prevent immediate distribution of the estate.

E. C. Jeewa v. H. H. Yacoob Ally and anor.[5] and **Re Syed Hassan bin Abdullah Aljofri deceased**[1] followed.

Cases referred to :—

(1) *Re Syed Hassan bin Abdullah Aljofri deceased* (1949) M.L.J. 198.

(2) *Ranee Khujooroonissa v. Mussamut Roushun Jehan* L.R. 3 I.A. 291.

(3) *Kurrutulain Bahadur v. Nuzbat-ud-dowla Abbas Hossein Khan* I.L.R. 33 Cal. 116; L.R. 32 I.A. 244.

(4) *Jafri Begam v. Amir Muhammad Khan* I.L.R. 7 All 822.

(5) *E. C. Jeewa v. H. H. Yacoob Ally and anor.* A.I.R. (1928) Rang 307.

(6) *In re Mohamed Haniffa deceased* (1940) S.S.L.R. 249; (1940) M.L.J. 286.

(7) *Sheriffa Fatimah binte Aboobakar bin Mahomed Al Mashoor v. Syed Allowee* (1883), 2 Kyshe (Eccl.) 31.

(8) *Saunders v. Vautier* 4 Beav. 115.

(9) *Re Gossling, Gossling v. Elcock* (1903) 1 Ch. 448; 88 L.T. 279.

(10) *Re Tan Kim Seng deceased* 12 S.S.L.R. 1.

ORIGINATING SUMMONS.

John Laycock for the plaintiff.

C. C. Tan for the defendant.

John Laycock for the plaintiff, the executor of the will of the deceased :—

It is admitted by all parties in this case that the testator was an Arab domiciled in Arabia. His Will states that the testator's intention is to dispose of his property in accordance with Mohammedan Law. The testamentary powers of the Testator are governed by the *lex domicilii* (not the *lex loci situs*) which is in this case Arabia not Singapore. See *Re Syed Hassan bin Abdullah Aljofri deceased*[1]. The Testator was a Mohammedan of the Sunni Shafi Madzahab; so we are concerned with the Sunni Shafi Mohammedan law if there is any difference between the law applicable to the different Sects. A Mohammedan cannot in accordance with Mohammedan Law dispose by Will of more than one-third of his estate. See *Ranee Khujooroonissa v. Mussamut Roushun Jehan*[2]. See *Mulla's* Principles of Mohammedan Law 11th Edition Section 104.

The executor of a deceased Mohammedan is his legal representative for all purposes and all the properties of the deceased vest in him as such. But since a Mohammedan cannot dispose by Will of more than one-third of what remains of his property after payment of his funeral expenses and debts and since the remaining two-thirds must go to his heirs according to Mohammedan Law as on intestacy then unless the heirs consent to the legacies exceeding the bequeathable third, the executor, when he has realised the estate, is a bare Trustee for the heirs as to two-thirds and an active Trustee as to one-third for the purposes of the Will. See *Kurrutulain Bahadur v. Nuzbat-ud-dowla Abbas Hossein Khan*[3] and *Mulla*, Section 30.

Generally speaking the whole estate of a Mohammedan if he has died intestate, or so much of it as has not been disposed of by Will, if he has left a Will, devolves on his heirs at the moment of his death, and such devolution is not suspended by reason merely of debts being due from the deceased. The heirs succeed to the estate as tenants-in-common in specific shares. See *Jafri Begam v. Amir Muhammed Khan*[4]. See *Mulla* Sections 31, 41, 44, 45, 103 and Section 104 (Limit of testamentary power) 108B, 108C and 108CC.

"If the heirs do not consent the remaining two-thirds must go to the heirs in the shares prescribed by the (Mohammedan) law. The testator cannot reduce or enlarge their share (*i.e.* of his heirs) nor can he restrict the enjoyment of their shares". *E. C. Jeewa v. H. H. Yacoob Ally and anor.*[5]; *Mulla* p. 116. The right of adult Mohammedan heirs to the unrestricted enjoyment of the property is unassailable. See *Ranee Khujooroonissa's case, supra.*

Since the testator could not restrict the heirs' enjoyment of the shares of the estate to which the heirs are absolutely entitled under Mohammedan Law immediately upon the death of the testator, it follows that any direction in the Will to postpone either the vesting of the shares in the heirs, or the distribution of their shares among the heirs, is not within the will-making powers enjoyed by the Testator and is therefore void.

C. C. Tan for the defendant, one of the heirs of the deceased under Mohammedan Law :—

The estate of a deceased Mohammedan devolves upon his heirs immediately on his death and they acquire an absolute interest in their specific shares even before distribution. *Syed Ameer Ali* on Mohammedan Law 4th ed. Vol. 11 p. 55.

Prohibition against the creation of estates in future under Mohammedan Law. *In re Mohamed Haniffa deceased*[6].

Doubt as to whether Mohammedan Law on testamentary capacity applies in the case of immoveables. Case of *Re Mohamed Haniffa* related to moveable. *In Sheriffa Fatimah binte Aboobakar bin Mahomed Al Mashoor v. Syed Allowee*[7] the Court of Appeal held that the validity of a will disposing of immoveable property must be decided by the law of the country where the land is situate. As against this see *Re Syed Hassan bin Abdullah Aljofri deceased, supra.*

If it is held Mohammedan Law does not apply, a gift of residue on a postponed date coupled with a gift of income during the intervening period constitutes an immediate gift of the whole property and legatee takes a vested interest. *Saunders v. Vautier*[8]. *Re Gossling, Gossling v. Elcock*[9]. *Re Tan Kim Seng deceased*[10].

Thorogood, J. : —In this matter the Court is asked to determine :—

"(1) Whether the direction contained in the Will of the testator that his estate should not be divided until twenty-one years after his death is void as being in excess of testamentary capacity; and, if so

"(2) Whether the persons beneficially entitled in the distribution of the residuary estate of the Testator according to Mohammedan Law took vested interests in the said estate on the death of the testator or whether they only take vested interests therein at the expiration of twenty-one years after the death of the testator;"

Mr. Laycock for the plaintiff took a preliminary point regarding representation. He referred to the Order of the Chief Justice of 22nd May 1950 :—

"That for the purpose of these proceedings the abovenamed Defendant do represent all the persons beneficially entitled in the distribution of the residuary estate of the Testator according to Mohammedan Law until further order of this Court and that service of these proceedings on any other persons so entitled be dispensed with . . . ."

Mr. Laycock suggested that the Order included his client who was also an heir of the testator but he could see no one else who would be interested in this matter. He was prepared to discuss the matter as it affected his client as executor. I held that in the circumstances no further representation was necessary.

It is agreed that the testator was domiciled in Arabia and it is clear from the provisions of his will that he had Mohammedan law in mind when making that will :—

"And I do hereby instruct that my estate should be divided in accordance with the Mohammedan Law twenty-one years after the date of my death."

The testator gave instructions for the disposal of the whole of his estate. The Privy Council has held that it is a rule of Mohammedan law that a Mohammedan cannot by will dispose of more than a third of his estate. *Ranee Khujooroonissa v. Mussamut Roushun Jehan*[2].

The answer to the first question set out above therefore can only be that the direction which purports to dispose of the whole estate is void as being in excess of testamentary capacity. The position is therefore as though no will has been made, although in this case the beneficiaries are the same whether there is a will or an intestacy. At best the executor could only be regarded as such in respect of one-third of the estate and as a bare trustee in respect of the other two-thirds. *Kurrutulain Bahadur v. Nuzbat-ud-dowla Abbas Hossein Khan*[3].

I now consider the matter of the postponement for twenty-one years after the testator's death which is raised in both the questions now before the Court and on which Mohammedan law appears to be equally emphatic. The whole estate of a deceased Mohammedan who has died intestate, or so much of it as has not been disposed of by will, devolves on his heirs at the moment of his death. *Jafri Begam v. Amir Muhammad Khan*[4].

Mr. Tan who appeared for the defendant submitted that no interest other than those before the Court was possible. All heirs are present and the only beneficiaries are the heirs. He submitted that not only is there immediate vesting in the heirs on the death of a Mohammedan but that the heirs acquire an absolute interest in their specific shares even before distribution or partition. In view of section 29 of Cap. 57, the law in this Colony relating to Mohammedans, and as there is no evidence or argument to the contrary, I have no hesitation in accepting this submission which is based on *Jafri Begam's* case above, quoted in "Mohammedan Law" by *Syed Ameer Ali.*

As the heirs in this case have an absolute indefeasible interest in their specific shares in this estate they may require payment at once. *Saunders v. Vautier*[8]. This well settled rule is also quoted in *Re Gossling*[9].

Counsel agreed that consideration of Question 3 in the Originating Summons should await determination of Questions (1) and (2) above.

Order accordingly.